



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 15, 1998

Mr. Eric M. Bost
Commissioner
Texas Department of Human Services
P.O. Box 149030
Austin, Texas 78714-9030

OR98-0144

Dear Mr. Bost:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 111627.

The Texas Department of Human Services (the "department") received a request for various information related to complaints against a certain nursing facility administrator as well as to any investigation conducted by the department against the administrator. You state that some of the requested information does not exist, and that some of it will be provided to the requestor. You assert that the remaining requested information, which consists of "the names of any and all witnesses contacted or interviewed by your offices or predecessors in conjunction with any preliminary determination or referral or recommendation of license revocation of Betty F. Turner," and "copies of any and all transcripts or copies of any and all tapes from witness interviews," is excepted from required public disclosure based on section 552.101 of the Government Code in conjunction with state and federal statutes and regulations. We have considered your arguments and reviewed the information submitted.

Section 552.101 of the Government Code excepts from required public disclosure information considered to be confidential by law, including information made confidential by statute. You state that the nursing facility administrator files submitted to this office include reports and attachments that were created by the department under its authority to investigate complaints. Section 242.127 of the Health and Safety Code provides that

a report, record, or working paper used or developed in an investigation made under this subchapter is confidential and may be disclosed only for purposes consistent with the rules adopted by the board or the designated agency.

This provision, in conjunction with section 552.101 of the Government Code, protects from required public disclosure the department's reports, records, and working papers used or developed in an

investigation of abuse or neglect in a nursing facility. In accordance with section 242.127, the department adopted section 19.2010 of title 40 of the Texas Administrative Code, which applies to investigations of complaints of abuse, neglect, and exploitation at nursing facilities and related institutions. Section 19.2010 provides in part as follows:

(a) Confidentiality. All reports, records, and working papers used or developed by the Texas Department of Human Services (DHS) in an investigation are confidential and may be released to the public only as provided below.

(1) Completed written investigation reports are open to the public, provided the report is de-identified. The process of de-identification means removing all names and other personally identifiable data, including any information from witnesses and others furnished to DHS as part of the investigation.

You have provided information to this office which appears to be completed investigation reports, as well as attachments to such reports, the response documents of Ms. Turner to the complaint investigation, and other documents related to the complaint against Ms. Turner. We assume that the names of individuals and statements of witnesses which you have marked in the submitted documents are responsive to the request. With regard to the written investigation reports, these reports must be de-identified prior to release, and thus the requested names of witnesses, to the extent they appear in these documents, are excepted from disclosure pursuant to section 552.101 in conjunction with section 19.2010 of title 40 of the Texas Administrative Code. With regard to the attachments to the investigation reports, the response documents of Ms. Turner to the complaint investigation, and other documents related to the complaint investigation, we conclude these records are "reports, records, and working papers used or developed by the (department) in an investigation" under section 242.127 of the Health and Safety Code, and thus, the attachments, including any witness names contained in this information which are responsive to the request are confidential under section 552.101.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/ch

Ref.: ID# 111627

Enclosures: Submitted documents

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